

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1366 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgement?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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PATEL VITTHALBHAI KISHOREBHAI

Versus

STATE OF GUJARAT  
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Appearance:

MR DIVYESH SEJPAL for Petitioners  
MR AJ DESAI, ld.AGP for Respondent No. 1  
MR BH BHAGAT for MR HM BHAGAT for Respondent Nos.2, 3  
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CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 30/03/2000

ORAL JUDGEMENT

This Special Civil Application is directed against the order dated 31st March 1999 passed by the respondent no.3 and the order dated 18th November 1999 passed by the respondent no.2. The prayer has been made that the petitioners are not liable to pay any stamp duty for the alleged transfer of property.

2. The case of the petitioners is that they had entered into an agreement to purchase the property on 15th February 1995 for a sum of Rs.1,95,000/- and at that time an amount of Rs.1,40,000/- had also been paid as earnest money, but at no point of time, the possession of the property was taken by the petitioners. In support of this submission that the possession had not been taken, the petitioners have also placed on record a certificate issued by the Talati-cum-Mantri of Ambliyara Gram Panchayat, Taluka Kapadvanj, Dist. Kheda and on the basis of this certificate dated 26th March 1999, learned Counsel for the petitioners has submitted that without taking possession of the property in question when the petitioner came to know that there was some dispute with regard to this property and that it was already occupied by some head-strong persons and it was not possible for the petitioners to take possession of this property from such head-strong persons, they decided to back out from this agreement and accordingly the agreement was cancelled and the party from whom they were to purchase also readily agreed to undo the effect of this agreement and returned the earnest money of Rs.1,40,000/- to the petitioners. Despite this factual position, the respondents wanted to recover the stamp duty from the petitioners for this transaction which never materialised and out of which they never took the possession of the land in question.

3. The Rule in this case was issued on 8th March 2000 and the matter was also ordered to be listed for final hearing along with other matters. Today, when the petition came up before the Court for hearing, it was pointed out by the learned Counsel appearing on behalf of the respondents that it is not at all a matter similar to Special Civil Application No.8036/99 to 8044/99 and certain other petitions because in those cases, the transaction was between the petitioners and the Municipality of Disa with regard to certain plots which were put to public auction. However, no return to the petition has been filed.

4. It is clear from the certificate issued by the Talati-cum-Mantri that the possession of the land in question was never taken by the petitioners and it is also clear from the uncontroverted statements of the petitioners that the agreement did not materialise and the transaction of the property never took place and further that no such document or sale deed was ever tendered for registration before the Sub Registrar. It appears that the notice was issued to the petitioners on

18th March 1999 without application of mind and in wholly mechanical manner. The notices are in cyclostyled form and it appears that such notice was issued to the petitioner by some mistake along with some other cases or on account of any other erroneous reason. If no document is tendered for registration, there is no question of stamp duty and the impugned orders have been passed in absolutely arbitrary and mechanical manner and if the transaction has not materialised, the possession has not been taken and no sale deed has been tendered by the petitioners for registration before the concerned Sub Registrar, there is no question of passing the orders dated 31st March 1999 and 18th November 1999 against the petitioners. It is given out that such orders are in cyclostyled form and these orders are sent just by filling in the necessary blanks. I, therefore, find it to be a clear case of non-application of mind and issue of orders in a wholly mechanical manner. The passing of these orders against the petitioners was wholly unwarranted. It is a dismal fact that such orders have been passed not only by the Deputy Collector, but even in the appeal preferred by the petitioners before the Chief Controlling Revenue Authority the similar course of action had been followed and the order as had been passed by the Deputy Collector, Stamp Valuation Organisation has been upheld for which there was no basis whatsoever. The passing of these orders is declared to be unwarranted in the facts of this case and all these orders are hereby quashed and set aside. This Special Civil Application is therefore allowed and the Rule is made absolute. It is ordered that if any amount was deposited by the petitioners at the time of filing the appeal the same shall be returned to the petitioners as and when a certified copy of this order is produced before the concerned authority.

(M.R. Calla, J.)

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